

REMARKS

Claims 6-13 were previously presented. In the following amendment, Claim 6 has been amended, Claims 9 and 12 have been cancelled, Claim 19-21, and Claim 1 have been added. Claim 1 was previously filed in an amendment to a final rejection dated September 12, 2002, in parent application serial no. 09/834,528 on November 12, 2002.

Accordingly, after entry of the amendment, Claims 1, 6-8, 10, 11, and 13, and 19-21 will be pending.

**Claim Rejections 35 USC §112**

Paragraphs 1-3 of Office Action

Claims 6-13 are rejected under 35 USC §112, first paragraph, as allegedly failing to comply with the enablement requirement.

Applicant has amended Claim 6 to overcome the Examiner's rejection.

In regard to Claims 9 and 12, the Examiner alleges, the phrase "said tongue member is misaligned horizontally with respect to said groove member", is not supported in the specification. Applicant has cancelled Claims 9 and 12. However, that language has been added to Claim 6 and new Claim 19. Accordingly, to the extent the rejection may now apply to Claims 6 and 19, Applicant respectfully disagrees.

In reference to Figures 6 and 7, the original specification states, "horizontal offsetting the tongue and groove 116 and 118 from each other can provide enhanced or "forced" sealing contact between the tongue and groove. In such an embodiment, . . . the tip of tongue 116 would initially contact one sloping surface of the groove 118 and then "slide" into the bottom of the groove 118 . . ." (page 10, lines 3-7, emphasis added). The original specification further states,

“In the embodiment of FIGS. 8 and 9, however, the tongue or tooth 216 is preferably misaligned with the groove or slot 218. As will be understood . . . this intentional misalignment ensures and enhances the contact . . . between tooth 216 and slot 218” (page 10, lines 19-22, emphasis added).

Accordingly, in each embodiment, the horizontal offsetting and/or misalignment of the tongue and groove provides/ensures enhanced sealing. In other words, the terms misalignment and offsetting are interchangeable such that the phrase “misalignment horizontally” is understood and reasonably conveys to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Paragraphs 4 and 5 of Office Action

Claims 6-13 are rejected under 35 USC §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 6, at lines 7 and 8, the Examiner alleges “said abutment” and “said tongue and groove” lack antecedent basis.

Applicant has deleted “said abutment” from Claim 6.

In regard to the Examiner’s assertion that, “said tongue and groove” on lines 7 and 8, of Claim 6 lack antecedent basis, Applicant respectfully disagrees. In reference to the lid, Claim 6 at line 5, reads in part, “including corresponding tongue and groove members”. As such, tongue and groove members were properly introduced prior to Applicant subsequent use of the phrase “said tongue and groove members”.

Since “said tongue and groove members” find proper antecedent basis in Claim 6, Applicant’s use of the phrase “said tongue member” and/or “said groove member” in claims dependent on Claim 6 are likewise proper.

The Examiner’s assertion that in Claim 6, “said groove member” lacks antecedent basis in Claim 7 is a bit confusing since Claim 6 does not depend from Claim 7. Accordingly, it is Claim 7 that would need to find antecedent basis in Claim 6. In this regard, as indicated above, any reference to “said tongue member” and/or “said groove member” in any claim depending from Claim 6 has proper antecedent basis.

In Claims 9 and 12, the Examiner further alleges, it cannot be determined what is required for “said tongue member is misaligned horizontally with respect to said groove member.”

Applicant has cancelled Claims 9 and 12, however, to the extent that the aforementioned rejection now applies to Claims 6 and new Claim 19, Applicant respectfully disagrees.

As indicated above in regard to the §112, first paragraph rejection of the same phrase, the original specification on page 10, lines 3-7, indicates that during assembly of the lid onto the container misaligned of the tongue and groove would cause the tip of the tongue to initially contact one sloping surface of the groove and then “slide” into the bottom of the groove. This is in contrast to the arrangement of Figures 6 and 7, where no misalignment of the tongue and groove exists such that when assembling the lid onto the container, the tongue would not initially contact one sloping surface of the groove.

Accordingly, Applicant contends that it can be determined by the specification and/or drawings what is required for “said tongue member is misaligned horizontally with respect to said groove member.”

### **Claim Rejections 35 USC §102/103**

Under 35 USC §102(b), the Examiner has rejected Claims 6-8, 11, and 13 as allegedly being anticipated by Widen et al. (4,444,332), and Claims 6, 7, 10, 11 and 13 as allegedly being anticipated by Von Holdt, Jr. (6,619,498).

In addition, under 35 USC §103, the Examiner has rejected Claims 6-8, 11, and 13 as allegedly being unpatentable over Widen et al. in view of Luburic et al. (5,626,251), and Claims 6, 7, 10, 11, and 13 as allegedly being unpatentable over Von Holdt, Jr. in view of Luburic et al. (5,626, 251).

Of the claims now pending, Claims 1, 6 and 19 are independent. Accordingly, once patentability of those claims is established, all claims depending therefrom (including all other pending claims) are likewise allowable.

As the Examiner has not rejected Claims 9 and 12 under 35 USC §§102/103, Applicant believes once the Examiner's §112, first and second paragraph rejections regarding the language of Claims 9 and 12 are overcome, independent Claims 6 and 19 (now having the language of cancelled Claims 9 and 12 included therein) should be allowable.

Similar to Claim 6, having (said tongue being misaligned horizontally with respect to said groove member), and Claim 12, having (said tongue member is misaligned horizontally with respect to said groove member), previously presented Claim 1 includes "said tongue member having a primary cross-sectional axis that is sloped outwardly with respect to the center of said container rather than being vertical". Accordingly, Claim 1, should be allowed.

As indicated and detailed above, Applicant respectfully disagrees with the Examiner's §112 rejections.

In view of the amendments, it is thought that the application including Claims 1, 6-8, 10, 11, 13, and 19-21 are now in condition for allowance, notice whereof is respectfully requested of the Examiner.

If the Examiner had any questions regarding the foregoing, or if the Examiner would like to discuss any remaining or new issues regarding this communication, the Examiner is invited to contact the undersigned representative of Applicant at (949) 718-6750.

Respectfully submitted,



Date: June 2, 2005

Mark A. Pellegrini  
Reg. No. 50,233  
J. Mark Holland & Associates,  
a Professional Law Corporation  
3 Civic Plaza, Suite 210  
Newport Beach, California 92660  
Telephone: 949-718-6750  
PTO Customer Number 21,259

JMH/MAP:mad

Z:\WinWord\Ropak\P3024\3024Amend1.doc